

Account Number

## Investment Management Fee Agreement

Kenneth L. Lay & Linda Lay  
Discretionary JT TEN COMM

The undersigned ("Client") hereby authorizes Morgan Stanley & Co. Incorporated ("Morgan Stanley") to act as Client's agent and attorney-in-fact to manage the Portfolio (as described below) in accordance with the Investment Guidelines attached hereto. Morgan Stanley shall reinvest any income from the Portfolio unless otherwise instructed by Client.

Morgan Stanley's authority shall include performance of clearance, settlement, custodial or other functions incidental to transactions.

### 1. The Portfolio.

The Portfolio shall consist of the assets held in Account # \_\_\_\_\_ as well as any additions, income, receipts, and proceeds (other than funds or securities disbursed). Morgan Stanley will furnish Client a confirmation of any sale or purchase made promptly after completion of any Portfolio transaction. Client will be responsible for notifying Morgan Stanley of any other changes to the Portfolio, such as the addition of assets to the Portfolio or the exclusion of assets from the Portfolio.

Client hereby represents that it has attached hereto a copy of its Investment Guidelines, which are incorporated by reference in this Agreement. Morgan Stanley hereby represents that it has read and understood such guidelines and will exercise limited discretion granted in this Agreement only with respect to trading in securities that meet such investment guidelines. Morgan Stanley shall be permitted conclusively to rely on and shall have no liability and shall be fully protected in relying on any such communication, or lack of such communication, in performing any of its duties hereunder.

### 2. Compensation.

As compensation for the services rendered hereunder, Morgan Stanley will charge an annual fee payable quarterly in arrears based upon the average of the total asset value of the Portfolio at the end of each month during the quarter, and computed as follows:

Total Asset Value of the Portfolio	Fee
Equities First \$10,000,000	1%
Equities Above \$10,000,000	.75%
Fixed Income First \$10,000,000	.40%

If Morgan Stanley shall serve for less than the whole of any quarter, its fee shall be determined as provided above on the basis of the total asset value of the Portfolio on the termination date and each prior month end (if any) during such quarter, and shall be paid on a *pro rata* basis for the period of the calendar quarter during which it served hereunder. Unless otherwise agreed to between Client and Morgan Stanley, Morgan Stanley shall deduct its fee directly from Client's account.

Client is aware that with Client's prior consent, Morgan Stanley may act as principal in certain transactions executed for Client's account. In transactions of this type, Morgan Stanley will typically buy the securities from Client at the prevailing bid price in the market and sell the securities to Client at the prevailing asked price in the market. The difference will be retained by Morgan Stanley, and a portion may be remitted to the Investments Representative. In addition, Client will be responsible for fees associated with foreign exchange transactions or conversions, and transaction fees or charges imposed by regulatory bodies, such as the Securities and Exchange Commission.

Client acknowledges receipt of a copy of Morgan Stanley's Part II of its Form ADV.

☐ Check here if a fee and commission based account, in which case:

Client will be responsible for brokerage commissions, taxes and any other transaction-related and other customary fees, and Client authorizes Morgan Stanley to pay such expenses for its account. Client acknowledges and consents to Morgan Stanley or any of its affiliates acting as broker-dealer for Client's account whenever permitted by applicable law. Client may be able to obtain better executions of securities transactions a broker-dealer other than Morgan Stanley or its affiliates is used to execute Client's transactions.

Section 11(a) of the Securities Exchange Act of 1934 ("1934 Act") generally prohibits exchange members from effecting securities transactions on national securities exchanges of which they are members for accounts managed by the member or its associated persons (e.g., institutional discretionary accounts). Section 11(a) of the 1934 Act does not apply to any transaction for the account of a natural person, the estate of a natural person, or a trust created by a natural person for himself or another natural person. In addition, section 11(a)

F6, F8 (Rev 1/00)

LAY-G20 0948

does not apply if the managed account authorizes the member or associated person to effect such transactions. If Client's account is subject to section 11(a) of the 1934 Act, it is agreed that, unless otherwise instructed by Client in writing, Morgan Stanley may effect such securities transactions and may retain commissions in connection with effecting such transactions for the Portfolio. Morgan Stanley will furnish Client (if subject to section 11(a)) at least annually a statement setting forth the total amount of such commissions (or an estimate thereof) during the period covered by the statement.

☒ ☒ Check here if a fee-only account, in which case:

Client will not be charged a commission on any transaction executed by Morgan Stanley as agent. Client acknowledges receipt of a copy of Morgan Stanley's Schedule H to its Form ADV.

### 3. Agency Cross Transactions.

Client authorizes Morgan Stanley to purchase and sell securities for the Portfolio in "agency cross transactions," which are portfolio transactions effected by Morgan Stanley acting as broker for both the Portfolio account and for the party on the other side of the transaction. "Agency cross transactions" enable Morgan Stanley to purchase or sell a block of securities at a set price and possibly avoid an unfavorable price movement which may be caused by entering the market with a sizable purchase or sale order. It is Morgan Stanley's belief that such transactions can provide meaningful benefits for its clients. However, with respect to agency cross transactions, Morgan Stanley may receive commissions from, and may have a potentially conflicting division of loyalties and responsibilities regarding, both parties to such transactions. Morgan Stanley will send a written confirmation to Client at or before the completion of each such transaction which includes, among other things, a statement of the date and nature of such transaction. Annually, Morgan Stanley will send Client a written disclosure statement identifying the total number of "agency cross transactions" during the period since the date of the last such statement and the total amount of all commissions or other remuneration received or to be received by Morgan Stanley during such period in connection with such transactions. This consent and authorization to execute agency cross transactions may be revoked by Client at any time by written notice to Morgan Stanley. This authorization will remain in effect until revoked by Client.

### 4. Investment Companies.

In accordance with Morgan Stanley's rights and responsibilities under this Agreement including, without limitation, the provision of sweep services described in

Section 6 hereof, Morgan Stanley may invest assets of the Portfolio in shares of investment companies ("Funds"). In connection with these investments, Client acknowledges that: (a) it has received a copy of the prospectus of each open-end Fund, which contains detailed information regarding investment in such Fund, including the fees and expenses; (b) Funds may execute portfolio transactions through, and pay brokerage commissions to, Morgan Stanley or its affiliates; (c) Client has the ability to invest in shares of the Funds directly without incurring costs additional to those set forth in the Fund prospectuses; (d) Morgan Stanley may receive distribution fees, shareholder servicing and other fees from the Funds, and (e) the value of the shares of the Funds held in the Portfolio will reflect the impact of Fund expenses such as brokerage commissions, taxes and other transaction-related fees, investment advisory fees, custodial fees, administrative fees and other expenses. Client understands and agrees that the fees and costs paid to Morgan Stanley and its affiliates by these Funds will be in addition to the compensation that Client pays Morgan Stanley for its services under this Agreement.

In addition, these investments may include shares of Funds to which Morgan Stanley or its affiliate acts as investment advisor, administrator or in another capacity ("Affiliated Funds"). In such cases, Morgan Stanley or its affiliate will receive investment advisory fees, administrative or other fees from the Affiliated Funds which are paid directly from assets held by such Funds including, in the case of open-end Funds, Client's assets invested therein by Morgan Stanley pursuant to this Agreement.

### 5. Procedures and Understandings.

Morgan Stanley is the regular investment banker for a number of major corporations and, from time to time, performs investment banking services for other companies as well. It is Morgan Stanley's belief that the nature and range of clients to which Morgan Stanley renders such investment banking services is such that it would be inadvisable to exclude categorically all of these companies from the Portfolio. Accordingly, unless Client advises Morgan Stanley in writing to the contrary, it is likely that securities in the Portfolio will include some of the securities of corporations for which Morgan Stanley performs investment banking services. Moreover, the Portfolio may include the securities of companies in which Morgan Stanley makes a market or in which Morgan Stanley or the officers or employees of Morgan Stanley own securities.

To comply with various regulatory requirements, there are periods when Morgan Stanley will not initiate or recommend certain types of transactions in the securities of companies for which Morgan Stanley is

LAY-G20 0949

performing investment banking services, and Client will not be advised of that fact. For example, during certain periods when Morgan Stanley is engaged in an underwriting or other distribution of securities of a company, Morgan Stanley may be prohibited from purchasing or recommending the purchase of certain securities of that company for its clients. Notwithstanding the circumstances described above, Client, on its own initiative, may place orders for specific securities transactions in Client's account.

In certain instances, Morgan Stanley may place a large order to purchase or sell a particular security for the Portfolio and the accounts of several other clients. Because of prevailing market conditions, it is frequently not possible to receive the same price or time of execution for all of the securities purchased or sold. When this occurs, Morgan Stanley will average the various prices and charge or credit the Portfolio's account with the average price. In such instances, the confirmation for the applicable transaction will disclose the average price. Upon request, Morgan Stanley will make the underlying records reflecting the actual transactions available for Client's inspection. Morgan Stanley shall not be obligated to give the Portfolio treatment that is more favorable than or preferential to that provided to its other accounts or clients.

The authority granted herein to buy and sell securities shall not be impaired or affected by the fact that Morgan Stanley may be buying or selling under similar discretionary authority from others. Client agrees that Morgan Stanley may give advice and take action in the performance of its duties with respect to any of its other clients that may differ from the timing or nature of action taken with respect to the Portfolio. Morgan Stanley shall not be under any obligation to purchase or sell for the Portfolio any security that Morgan Stanley, its officers, or employees may purchase or sell for its or their own accounts or purchase or sell or recommend for purchase or sale for the account of another client if, in the sole discretion of Morgan Stanley, such action is not practical or desirable for the Portfolio.

In the course of investment banking or other activities, Morgan Stanley and its affiliates may acquire confidential or material non-public information. Client acknowledges and agrees that Morgan Stanley is not free to divulge to Client or to act upon such information with respect to its performance of this Agreement.

#### **6. Sweep Service.**

Client acknowledges that Morgan Stanley, in exercising its discretion under this Agreement, may use free credit balances in the Portfolio to purchase shares of the registered investment companies designated by Client below and to redeem those shares for the purpose of

investing in other securities. Such purchases may be made automatically or manually, depending on the registered investment companies designated. When Client funds are invested in the funds listed below, Morgan Stanley or its affiliates may receive certain fees in connection with services provided by Morgan Stanley or its affiliates to certain funds. Client acknowledges receipt of copies of the prospectuses for the funds which are purchased hereunder. The prospectuses contain additional terms governing this sweep service. Subject to applicable law, the prospectuses may be amended at any time without Client's prior consent.

#### **7. Proxies.**

It is understood that, notwithstanding the delegation to Morgan Stanley of investment discretion over the Portfolio pursuant to this Agreement, unless Client specifically requests otherwise, Client specifically has reserved to itself, and Morgan Stanley has not accepted discretion with respect to and will not exercise, any right to vote proxies arising in association with assets in the Portfolio. Morgan Stanley will forward any proxy materials that pertain to assets in the Portfolio at the direction of the Client.

#### **8. Authorized Persons.**

If Client is not an individual, Client has provided Morgan Stanley with a certificate of its Secretary or other appropriate person setting forth the names and specimen signatures of all the individuals (the "Authorized Persons") who are authorized to act on behalf of Client with respect to the Portfolio, and promptly after any change therein, Client will supply a revised list of Authorized Persons and evidence of the authority for such a change. The one or more individuals executing this Agreement for Client are Authorized Persons. Morgan Stanley shall not be liable and shall be fully protected in relying upon any notice, instruction or other communication that Morgan Stanley reasonably believes (based on the most recent certificate supplied by Client) to have been given by an Authorized Person.

#### **9. Limit of Liability/Indemnity.**

(a) Client may file with Morgan Stanley a written objection to any act or transaction undertaken by Morgan Stanley pursuant to this agreement within a period of five (5) days from the date of receipt of a confirmation slip or Portfolio statement relating thereto. Except with respect to any such act or transaction to which Client so objects, Morgan Stanley shall, to the fullest extent permitted by law, upon the expiration of such period, be forever released and discharged from any liability or accountability to the Client or any other person as respects the propriety of any such act or transaction.

LAY-G20 0950

(b) To the fullest extent permitted by law, Client agrees to indemnify and hold Morgan Stanley harmless from, and to pay Morgan Stanley promptly on demand, any and all losses, damages, liabilities, excise taxes, civil penalties, demands, charges and claims of any kind, however denominated, arising from or related to: (i) Morgan Stanley's acts, omissions, transactions, duties, obligations or responsibilities hereunder (except to the extent caused by Morgan Stanley's gross negligence or intentional misconduct); and/or (ii) acts, omissions, transactions, duties, obligations or responsibilities of Client.

#### 10. Assignment; Termination.

This Agreement shall not be assigned without Client's consent and, if Client is an individual, the powers conferred upon Morgan Stanley hereunder shall not be affected by the subsequent disability or incompetence of Client. This Agreement may be terminated by either party at any time. Upon termination, any trade executed but not settled prior to such termination will be honored.

#### 11. Choice of Dispute Resolution.

ANY DISPUTE CLIENT MAY HAVE WITH MORGAN STANLEY ARISING OUT OF, RELATING TO OR IN CONNECTION WITH CLIENT'S BUSINESS, ANY TRANSACTION OR CONTRACT BETWEEN THE PARTIES TO THIS AGREEMENT OR THIS AGREEMENT SHALL BE DETERMINED BY ARBITRATION OR LITIGATION IN COURT AT THE ELECTION OF CLIENT. REGARDLESS OF WHETHER CLIENT CHOOSES TO PROCEED BY ARBITRATION OR LITIGATION, MORGAN STANLEY AND CLIENT AGREE TO FOLLOW THE PROCEDURES, AND ABIDE BY THE REQUIREMENTS, LISTED BELOW.

##### Arbitration:

- Arbitration is final and binding on the parties.
- The parties are waiving their right to seek remedies in court, including the right to jury trial.
- Pre-arbitration discovery is generally more limited than and different from court proceedings.
- The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.
- The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

ANY ARBITRATION SHALL BE CONDUCTED ONLY BEFORE THE NEW YORK STOCK EXCHANGE, INC.,

THE AMERICAN STOCK EXCHANGE, INC., THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., OR ANY OTHER SELF-REGULATORY ORGANIZATION OF WHICH MORGAN STANLEY IS A MEMBER. CLIENT HAS THE RIGHT TO ELECT ONE OF THE FOREGOING ORGANIZATIONS, BUT IF CLIENT FAILS TO MAKE SUCH ELECTION BY CERTIFIED LETTER ADDRESSED TO MORGAN STANLEY AT THE OFFICE WHERE CLIENT MAINTAINS ITS ACCOUNT, BEFORE THE EXPIRATION OF FIVE DAYS AFTER RECEIPT OF A WRITTEN REQUEST FROM MORGAN STANLEY TO MAKE SUCH ELECTION, THEN MORGAN STANLEY MAY MAKE SUCH ELECTION. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS CONSENT BY MORGAN STANLEY TO AN AWARD OF PUNITIVE DAMAGES. THE AWARD OF THE ARBITRATORS, OR THE MAJORITY OF THEM, SHALL BE FINAL, AND JUDGMENT UPON THE AWARD RENDERED MAY BE ENTERED IN ANY COURT, STATE OR FEDERAL, HAVING JURISDICTION.

No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until:

- (I) The class certification is denied;
- (II) The class is decertified; or
- (III) Client is excluded from the class by the court.

Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.

##### Litigation in Court:

UNLESS THE PARTIES OTHERWISE AGREE IN WRITING, WHEN ANY DISPUTE ARISES, ANY LITIGATION MUST BE INSTITUTED IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE COUNTY OF NEW YORK. ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM OR ACTION IS HEREBY WAIVED BY ALL PARTIES TO THIS AGREEMENT.

#### 12. Representations by Client.

LAY-G20 0951

Client represents that the terms hereof do not violate any obligation by which Client is bound, whether arising by contract, operation of law, or otherwise, and that, if required, (i) this contract has been duly authorized by appropriate action and is binding upon Client in accordance with its terms, and (ii) Client will deliver to Morgan Stanley such evidence of such authority as Morgan Stanley reasonably may require, whether by way of a certified resolution, trust agreement, or otherwise. Client represents that it owns the securities that constitute the Portfolio on the date hereof free and clear of any lien, claims, encumbrances or transfer restrictions (including transfer restrictions imposed under the securities laws or by contract).

### 13. Customer's Agreement.

In the event that Client has signed a Customer's Agreement, this agreement supplements such Customer's Agreement and shall in no event be deemed to abrogate or in any other way diminish any of Morgan Stanley's rights under said Customer's Agreement; provided, however, that in the event of any conflict between the terms of this agreement and the terms of the Customer's Agreement, the provisions of the Customer Agreement shall prevail.

### 14. Governing Law.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without reference to the principles of conflicts of law.

INITIAL LINE BELOW IF AUTHORITY IS BEING GRANTED TO EFFECT MARGIN TRANSACTIONS.

Morgan Stanley is authorized to purchase securities on margin for the Portfolio.

### Sweep Service Selection

Indicate below Client's choice of sweep service including name of fund selected.

☒ Morgan Stanley Dean Witter Institutional Fund

Name of Fund

*Money market*

☐ Reich & Tang

Name of Fund

☐ Other

Name of Fund

Notice: this agreement contains a pre-dispute arbitration clause in section 11.

By,

Account Title

*Kenneth J. Lay*

Signature

*Glenn P. Lay*

Signature

Date

Agreed and Accepted:

MORGAN STANLEY & CO. INCORPORATED

By,

Signature

Title

Date

### INVESTMENT GUIDELINES

If Full Discretion:

Morgan Stanley shall manage the Portfolio in such manner as Morgan Stanley may deem advisable, with full investment authority and discretion, on Client's behalf and at Client's risk, to purchase, sell, sell short, tender, exchange, convert, write, exercise and trade in securities or options of such type, in such amounts, at such prices and in such manner that Morgan Stanley may deem advisable, including on margin. In this Agreement, the term "securities" shall include stocks, mutual funds, bonds, debentures, notes, other evidences

LAY-G20 0952

of indebtedness, put and call option contracts, subscription rights, warrants, certificates of deposit, mortgages, commercial paper, partnership interests or any other instrument of any kind in the nature of a security whether represented by trust participations or other certificates or otherwise.

LAY-G20 0953